



THE CITY OF SAN DIEGO

**CITIZENS' EQUAL OPPORTUNITY COMMISSION
REGULAR BUSINESS MEETING**

***CD of Recorded Minutes available upon request**

MINUTES

**Wednesday, December 1, 2010
6 P.M.**

**City Administration Building
Council Committee Room
202 C Street – 12th Floor
San Diego, CA 92101**

Commissioners Present:

Shirley Weber (Chairperson)
Eileen Chaske
Maurice Wilson

Brad Barnum
Mike Olivier
Ron Cho

Stamp Corbin (Vice Chair)

Absent Commissioners: Juan Gallegos, Jon Cloud,

MAYOR'S STAFF:

Debra Fischle-Faulk, Administration Department Director
Hildred Pepper, Purchasing & Contracting Department Director
Henry Foster, Equal Opportunity Contracting Program Manager
Donna Stevenson, Early Morning Systems
Laura Davis, Word Process Operator, Equal Opportunity Contracting Program

- I. CALL TO ORDER:** The meeting was called to order at 6:03 p.m. by Chairperson Shirley Weber.
- II. APPROVAL OF MINUTES AND AGENDA:** Agenda was unanimously approved. Minutes from November 3, 2010 unanimously approved.
- III. PUBLIC COMMENT: NONE**
- IV. STAFF REPORT: Debra Fischle-Faulk – Director's**
 - *Presentation by Donna Stevenson President / Owner of Prism Systems / Early Morning Systems Software.*

V. ACTION ITEMS:

- *Review Draft of the Annual Report – handout provided*

VI. DISCUSSION ITEMS: NONE

VII. SUBCOMMITTEE REPORT: NONE

VIII. COMMISSIONERS ANNOUNCEMENTS: NONE

IX. CHAIR'S REPORT: NONE

X. ADJOURMENT: 7:30 P.M

*****Materials Provided**

- I. Agenda
- II. Minutes of November 3, 2010
- III. Handouts
 - Annual Report Draft

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from December 1, 2010

November 29, 2010

From: Mr. Mike Olivier

To: City of San Diego
Citizens Equal Opportunity Commission

Subject: Meeting Notes, 19Nov2010, CEOC - Vendor Minority Business Types

Introduction

Questions arose regarding the data, presented by the Purchasing Contracting Department, FY-10 Purchase Orders; and the data from the EOCP Program Update Nov. 3, 2010. Thanks to Mr Pepper for meeting with me, November 19.

Points

There are contact data from two sources, (1) Purchasing Contracting Department, FY-10 Purchase Orders; (2) EOCP Program Update Nov. 3, 2010.

- When looking at the contracts for A&E (EOCP Program Update Nov. 3, 2010), the total spend is \$41.5M, 40% of the dollars spent are to certified businesses (\$16.5M). In this example (Purchasing Contracting Department, FY-10 Purchase Orders) only 21% is to certified businesses. My guess is that they should be pretty much the same, since this is the same city, business set, etc.
- When looking at the contracts for A&E (EOCP Program Update Nov. 3, 2010), out of the total spend for certified businesses (\$16.5M); \$10M is for Female (60%). In this example only 2% is to Women Owned Businesses Enterprise(s). My guess is that there are more women owned businesses, in general.
- There are fourteen categories of Vendor Minority Business Types, many Minority Businesses select more than one business type. This will result in an over count of the total spend, and an over count of the number of businesses for the 13 Vendor Minority Business Types. The issue is should there be one dominate type, when most small business owners are several types, i.e. one could be: Women Owned, Veteran, LGBT, SLEB, 8(a), etc.?
- Some of these business types seem to overlap, i.e. Small Business Enterprise, Micro Local Business Enterprise, etc. Is there a clear definition for these types for the applicant? For the most part these businesses self-certify their business type.
- The category of Non-Certified includes contracts to large and small businesses. In addition, the total spend included contracts, that most likely, would include some Vendor Minority Business Types. For example, contracts for office supplies would most likely include some of these Business Types. This category also included contracts that would be out of scope for most Vendor Minority Business Types, such as office rent, insurance, etc.

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from December 1, 2010

- The Non-Certified spend includes professional services to include: accounting and legal services, different engineering and medical services, landscaping services, etc. These contracts were awarded to both small and large businesses.

Recommendations:

1. The Commission needs to determine what it is interested in measuring. This is not necessarily an easy task.
2. Do you measure the economic participation of one business type (i.e. one of the 13 certified Vendor Minority Business Types), if so how do you measure this when the business can rightfully claim multiple types?
3. Is the focus on small business of all kinds, to include the ones that do not fit into one of the 13 types; or only the 13 identified types of business large and small, or only the small, or all? (This number of 13 Vendor Minority Business Types seems too large to me.)
4. What is a small business?
5. And what are the definitions of the 13 Vendor Minority Business Types?

ROUGH, ROUGH DRAFT

BACKGROUND

The Citizen's Equal Opportunity Commission (CEOC) was established, pursuant to the authority of Municipal Code section 26.16 enacted on November 1, 2 1975, as an advisory commission to the Mayor and City Council. The duties of the commission include monitoring and/or evaluating the Equal Opportunity Program of the City; advising on a continuing basis the Mayor, City Council, City Manager, Civil Service Commission and other appropriate agencies of the City government; submitting written quarterly reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules, Open Government and Intergovernmental Relations Committee ("the Rules Committee") and, upon acceptance, for submission to the full City Council. Other duties of the commission include assisting the City in recruitment of Opportunity Employer and as a provider of equal opportunity to individuals and firms desiring to contract with the City. Commissions are appointed by the Mayor and confirmed by the City Council. They serve two year terms, without compensation. There are nine actively serving commissioner. Among the commissioners, the following constituencies are represented: African American, Asian/Pacific Islander, Disabled, Filipino, Latino, Lesbian/Bisexual/Transgender, and Native American.

The CEOC meets regularly at 6:00 PM, on the first Wednesday of each month in the 12th Floor meeting rooms of the City Administration Building located at 202 C Street, San Diego. The meetings are publicly noticed and open to the public. In addition to the regular meetings, the commission has occasionally held monthly working meetings, also open to the public and publicly noticed, at 8 AM on a weekday immediately following the regularly scheduled meeting, to work on specific issues being addressed by the Commission and the Council.

The past year, the Mayor has been very diligent in appointing new members to the Commission when commissioners have been termed out. Additionally, the members of the commission have been diligent about attending meetings and the commission has had great success in having a quorum in order to conduct meetings. In fact, the commission met once when the City Administration building's elevators were closed due to an earthquake. The commission met on the first floor in order to deliver its opinion on matters coming before the council.

OVERVIEW

The city has identified itself as an "Equal Opportunity Employer" and seeks to accomplish this goal in two major ways: employment and public contracting. The public contracting aspect of the City's programs involved the City's agreements with non-employed individuals and firms who provide services to the City, for example through consulting, the supply of goods and materials, and the construction of public works. There is, however, no single "Equal Opportunity Program's which the CEOC's attention is focused. Instead, as discussed below, the CEOC has monitored a number of different programs whose stated goals are to afford equal opportunity.

In the past, the greatest challenge of CEOC was getting the necessary data to evaluate and monitor programs. As stated in earlier annual reports, the city's collection and data was abysmal. There was little information to properly evaluate programs and their effectiveness. Additionally, the reporting of the scant data available was irregular. The CEOC requested timely and regular reporting at monthly meetings. Because of the number of agencies involved in equal opportunity, the commission developed a clear line of expectation that the responsibility for ensuring accurate and regular reports rested on the shoulders of Ms Fischle-Faulk. The CEOC is pleased to report that the staff delivered on this responsibility, thus making the commission a more effective operating body and able to respond to matters effecting equal opportunity in a timely manner. This resulted in the CEOC appearing before Rules Committee, full Council, and diversity committees at city and county levels, and delivering written opinions to the effected groups.

The staff this year has made equal opportunity a top priority. Thus, they have consistently brought critical issues before the commission that might improve the city's equal opportunity record, which has consistently been low for the past several years. The fact that the staff assigned to the commission has made improvement a high priority, there does not appear to be such evidence from the Council's actions. Absent an affirmative action program in the state, the efforts to improve the city's record will require extraordinary commitment on the part of the elected officials who set the tone for the operation at the city level. Seldom is the topic of equal opportunity brought before the council, unless it is introduced by the CEOC. This makes equal opportunity a step child in the city's operations. It is in this context that this report is presented concerning the work of the CEOC and City's efforts in the area of Equal Opportunity.

DISCUSSIONS:

As stated above, 2009/2010 presented new opportunities for the CEOC. The ability to receive data concerning the city's programs and their effectiveness propelled the commission into the arena of pro-actively effecting programs and policies being considered by the council.

THE SUBCONTRACTING OUTREACH PROGRAM (SCOPE)

Fortunately, at the request of the Administration Department Director, there was an audit done of the SCOPE program that revealed the limitations of SCOPE. The commission addressed many of the issues presented by the audit and supported the recommendation that a Disparity Study be conducted by the Council. This recommendation of a Disparity Study has been on the agenda of the Council for some while. It was addressed in last year's report and not properly address last year because the Council was waiting for the decision of the Coral Construction, Inc. v. City and County of San Francisco case. That case has been ruled upon that its decision has not provided San Diego with much direction concerning this area. Thus, the CEOC reiterates the necessity for a Disparity Study.

As stated in last year's report, SCOPE has not been effective in increasing MBE, WBE, DBE and or DVBE participation in City construction contracts. Last year's report also called out the fact that a centralized

bidder registration software system was promised and was to have been implemented and to date, has not been. It has taken the City more than three years to implement the new software, which is still not operational. However, the Administration Department purchased Prism Compliance Management software to assist with automating compliance related activities, reporting and certification.

CONTRACT VENDOR REGISTRATION SYSTEM

As stated above, to the dismay of the Commission, this system is still not operational. Promised in 2008, and guaranteed in September of 2009, the Commission awaits the installation and implementation of this system. Having waited so long for this software, we are hopeful that it will make a marked difference in the operation of the outreach efforts of the City and positively impact the number of M/WBE and DVBE doing business in San Diego.

SMALL LOCAL BUSINESS ENTERPRISE (SLBE)

The Commission was pleased to participate in the preparation of the final draft of the SLBE Program, ultimately approved by the Mayor and adopted by the City Council. A number of drafts were presented to the Commission for our questions, comments and input. After receiving responses to our input, questions and suggested refinements, the Commission voted to support the final draft. We receive monthly updates from staff and look forward to positive results.

THE MINOR PUBLIC WORKS PROGRAM (FORMERLY THE MINOR CONSTRUCTION PROGRAM)

The Minor Construction Program has been replaced with a Minor Public Works Program (SLBE) that has a higher limit (\$500,000 in comparison to \$250,000) and more incentives for bidders. The recommendation of the CEOC of last year's report was adhered to by staff in the revamping of this program.

The staff has been actively involved in promoting this program. To their credit, they have conducted numerous workshops for various organizations on the new program and have been aggressively registering small local businesses into the program. To date there are 162 have been approved SLBEs, 96 pending applications with 18 denied and 7 inactive.

CONSTRUCTION CONTRACTS

Construction contracting has consistently been the area of great concern of CEOC. The numbers are unacceptably low and the resistance to change equally entrenched. This was most apparent in the activities of the AGC –San Diego to challenge the Caltrans Disparity Study and bar any race conscious and race neutral programs of Caltrans. The CEOC, in its letter to the Council, found the challenge unconscionable in light of the fact that 95% of Caltrans \$3 billion in federal funds were awarded to white

male contractors. The Commission called upon the Council to join them in this effort to stop the AGC's efforts. The CEOC was supported by the local NAACP and the Equal Justice Society of San Francisco.

Despite the efforts of the staff, San Diego's progress in this area is small. It has increased from 3% (2009) to 4.4% (2010). The commission has yet to feel the impact of the Mayor's expressed outrage in 2007 where the progress of the city in the area of equal opportunity in contracting was declared an "abysmal job."

ARCHITECTURAL AND ENGINEERING (A&E) CONSULTANT FIRMS

Unlike construction, the City's equal opportunity's efforts in the areas of architecture and engineering are more promising. Commitments to certified firms increased from 11% (2009) to 40% (2010). In this area, there appears to be greater flexibility in the awarding of contracts. And while the Commission is pleased with the increase, there is still room for greater diversity given the size of the ethnic, disabled and female populations in San Diego.

GOODS & SERVICES

We recognize the City spends hundreds of millions of dollars on goods and services and have expressed our interest in raising the level of attention to diversity in this area. We have requested statistical reports in order to gauge the city's progress. The limited information received to date has been difficult to understand and we therefore have been unable to determine where this program stands. In addition we are unclear of the status of the Vendor Registration System that we understood was electronic at one time but is currently manual.

It is our understanding that the City Council requested the IBA to research successful diversity programs in the procurement of goods and services and report back. The Commission would like to receive that report and recommends a comprehensive programmatic semiannual report on goods and services be provided to the Mayor, Council and Commission.

EMPLOYMENT

Recognizing that diversity in city employment falls under our mission, the Commission requested and received a presentation on the latest diversity statistics of the city from the Personnel Department. This was the first presentation made in several years. We will continue to monitor these statistics on at least an annual basis.

OUTREACHING ACTIVITIES

The following outreach/technical assistance activities were conducted to assist businesses with understanding how to do business with the City and new program elements:

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from December 1, 2010

| Date | Event | Purpose |
|----------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| 12/11/09 | SBA & Surety Assoc. Bonding Workshop – Pilot | Technical Assistance |
| 01/29/10 | SBA & Surety Assoc. Bonding Workshop – EOCP Outreach | Technical Assistance |
| 04/08/10 | Presentation to Small Business Group – EOCP Outreach | SLBE /Program Application Rollout |
| 04/09/10 | Consultant Group Presentation | Program Presentation |
| 04/14/10 | Public Agency Consortium Meeting | SLBE Program Presentation |
| 05/19/10 | Balboa Park Club Bidders Symposium – E&CP Outreach | SLBE Program Application Workshop /Doing Business with the City |
| 05/25/10 | Tubman Chavez Multicultural Center – EOCP Outreach Event | SLBE Program Presentation/Application Workshop |
| 05/26/10 | Consultant Group Presentation | SLBE Program Presentation |
| 06/01/10 | Elite Service Disabled Veterans Monthly Meeting | SLBE Program Presentation/Application Workshop |
| 06/02/10 | Subs For Subs – CCDC Annual Outreach | SLBE Program Presentation/Application Workshop/ How to Do Business with the City |
| 06/03/10 | Turner School of Construction Management | SLBE Program Presentation/Application Workshop |
| 06/04/10 | Meeting with City Protégés | SLBE Program Presentation/Application |

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from December 1, 2010

| | | |
|----------|--------------------------------------------------------|----------------------------------------------------------------------------------|
| | | Workshop |
| 06/07/10 | Meeting with San Diego Unified School District | SLBE Program Presentation |
| 06/10/10 | Meeting with Construction Industry | SLBE Program Presentation |
| 06/18/10 | Small Business Advisory Board | SLBE Program Presentation |
| 07/20/10 | Asian Business Association | SLBE Program Presentation/How to Do Business with the City |
| 07/26/10 | San Diego Regional Supplier Development Council | SLBE Program Presentation/Application Workshop/ How to Do Business with the City |
| 07/27/10 | Tubman Chavez Multicultural Center – D4 Outreach Event | SLBE Program Presentation/Doing Business with the City |

COMPLIANCE RELATED ACTIVITIES

With the focus shift to compliance activities, there has been a significant increase in this area as indicated below:

| Compliance Activity | FY2010 | FY2009 |
|--------------------------------|--------|-----------------------------|
| Pre-bid meetings* ¹ | 104 | 76 |
| Pre-construction meetings* | 69 | Not included in 2009 report |
| Consultant interview panels | 48 | 15 |
| RFP review | 108 | 37 |
| Project site visits | 107 | 17 |

¹ Provide details of EO bid/contract requirements and answer contractor questions.

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from December 1, 2010

| | | |
|-------------------------------------------------|------------|-----------------------------|
| Employee interviews | 176 | Not included in 2009 report |
| Certified payrolls reviewed | 1,238 | Not included in 2009 report |
| \$ recovered for employees | \$769 | Not included in 2009 report |
| Scope documents reviewed | 78 | Not included in 2009 report |
| Scope documents failed | 15 | Not included in 2009 report |
| Federal good faith effort documents reviewed | 5 | Not included in 2009 report |
| Federal good faith effort documents failed | 2 | Not included in 2009 report |
| EO Plans requested, received and reviewed | 98 | 12 |
| EO Plans approved | 74 | 10 |
| EO Plans pending additional information | 24 | 2 |
| Final Summary Reports received and approved | 27 | 29 |
| Subcontractor payment verifications | 207 | 58 |
| \$ recovered for subcontractors | \$75,406 | Not included in 2009 report |
| \$ assessed for public contract code violations | \$2,694.48 | Not included in 2009 report |

STRUCTURE AND STAFFING

It has been quite a challenge to implement the work of equal opportunity with extremely reduced staff. However, despite that, the work of those assigned to CEOC has been excellent. The willingness to provide the Commission with much needed data and updates has allowed the Commission to respond quickly and effectively to the various proposals before the city. (See the log of CEOC activities since the last report).

We realize that the structure was not optimal. Therefore, we are pleased with the addition of Mr. Henry Foster as Program Manager in the Administration Department. Mr. Foster brings the type of government and private industry expertise needed to enhance the work of the Commission.

CEOC accomplished much this past year. It has soundly placed the City on the path to progress. What it needs is the support of Council and the Mayor to make Equal Opportunity a top priority. Other cities in California faced with similar challenges have outdistanced San Diego in this area. San Diego motto of "the Finest City" is often tarnished by its dismal report in Equal Opportunity.

The Commission appreciates the staff and those who have supported our work. We eagerly and enthusiastically enter 2011 with high expectations and optimism.

DRAFT